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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,860	12/22/2003	John Joseph Lassig	17995	9094
23556	7590	10/10/2006		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956				
EXAMINER DEL SOLE, JOSEPH S				
ART UNIT			PAPER NUMBER	

1722

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/743,860

**Applicant(s)**

LASSIG ET AL.

**Examiner**

Joseph S. Del Sole

**Art Unit**

1722

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): the 35USC102 and 35USC103 rejections.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
The double patenting rejections remain.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

## **ADVISORY ACTION**

### ***Election/Restrictions***

1. Claims 7-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/17/06.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-4 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,579,084 in view of Allen et al (5,145,689).

Claims 1-24 of 6,579,084 teach an apparatus for making a fibrous nonwoven web having an extrusion die; a first fluid supply in cooperation with the extrusion die; a

plurality of first extrusion capillaries; first counterbores allowing fluid communication between the first extrusion capillaries and the first fluid supply; and wherein each of the first counterbores has at least three of the first extrusion capillaries extending therefrom.

Claims 1-24 of 6,579,084 fail to teach a second fluid supply in cooperation with the extrusion die; a plurality of second extrusion capillaries; second counterbores allowing fluid communication between the second extrusion capillaries; the second fluid supply wherein each of the second counterbores have at least two of the second extrusion capillaries extending therefrom; 2-20 counterbores per inch of the die; a third fluid supply, a plurality of third extrusion capillaries and third counterbores allowing fluid communication between the third extrusion capillaries and the third fluid supply.

Allen et al teach first, second and third fluid supplies (Fig 2, #s 15A-15D), each with a plurality of outlets (Fig 2, #61) spaced at 2-20 per inch (col 5, lines 45-60) for the purpose of applying multiple polymers to a single collector in a controllable pattern (col 3, lines 40-55).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Claims 1-24 of 6,579,084 with multiple fluid supplies separately supplying outlets counted between 2 and 20 per inch of die as taught by Allen et al and to have fashioned these outlets as counterbores with multiple capillaries in unison with the design of claims 1-24 of 6,579,084 because such design enables nonwovens to be formed of multiple materials.

4. Claims 1-3 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,579,084 in view of Varona (5,679,042).

Claims 1-24 of 6,579,084 teach an apparatus for making a fibrous nonwoven web having an extrusion die; a first fluid supply in cooperation with the extrusion die; a plurality of first extrusion capillaries; first counterbores allowing fluid communication between the first extrusion capillaries and the first fluid supply; and wherein each of the first counterbores has at least three of the first extrusion capillaries extending therefrom.

Claims 1-24 of 6,579,084 fail to teach a second fluid supply in cooperation with the extrusion die; a plurality of second extrusion capillaries; second counterbores allowing fluid communication between the second extrusion capillaries; the second fluid supply wherein each of the second counterbores have at least two of the second extrusion capillaries extending therefrom; a third fluid supply, a plurality of third extrusion capillaries and third counterbores allowing fluid communication between the third extrusion capillaries and the third fluid supply.

Varona teaches first, second and third fluid supplies (Fig 5, #s 110 and 111), each with a plurality of outlets (Fig 5, at A, B and C multiple fibers are produced each) for the purpose of applying multiple polymers to a single collector in a controllable pattern (col 5, lines 5-67 and col 6, lines 50-55).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Claims 1-24 of 6,579,084 with multiple fluid supplies separately supplying outlets as taught by Varona and to have

fashioned these outlets as counterbores with multiple capillaries in unison with the design of claims 1-24 of 6,579,084 because such design enables nonwovens to be formed of multiple materials.

5. Claim 5 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,579,084 in view of either Allen et al (5,145,689) or Varona (5,679,042) and further in view of any of MacManus (3,878,992), Schmidt et al (5,601,773) or Martinez (4,322,202).

Claims 1-24 of 6,579,084 and either Allen et al or Varona teach an apparatus as discussed above.

Claims 1-24 of 6,579,084 fail to teach a third fluid supply wherein the second counterbores allow fluid communication between the second extrusion capillaries and the third fluid supply.

MacManus teaches multiple sources (Fig 4, #24A) each allowed fluid communication between themselves and a single outlet (Fig 4, and one #13D) for the purpose of producing a product for an outlet that is supplied from separate sources (col 11, lines 25-30). Schmidt et al teach multiple inlets directed to a single port for the purpose of producing a product formed of multiple mixed materials (col 3, lines 40-50). Martinez teaches multiple inlets to a single outlet for the purpose of producing a single product formed of multiple materials (col 2, lines 23-25).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Claims 1-24 of 5,679,084 with a third fluid supply wherein the second counterbores allow fluid communication between

the second capillaries and the third fluid supply as taught by any of MacManus, Schmidt et al and Martinez because such combinations enable a greater number of output compositions.

***Response to Arguments***

6. Applicant's arguments filed 9/25/06 have been fully considered.

The Examiner has reconsidered the previous rejections and determined that the claims are allowable over the prior art. However, the double patenting rejections remain.

***Allowable Subject Matter***

7. Claims 1-6 would be allowable if the double patenting rejection is overcome.

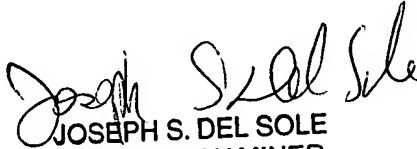
8. The following is a statement of reasons for the indication of allowable subject matter: the Examiner acknowledges that the claims are limited to multiple capillaries extending from counterbores, wherein there are multiple capillaries per counterbore. Primary reference Barbier et al is inappropriate because 15 is not capillary. As such, 15 is a bore (forebore or counterbore) and there exists only one capillary for each bore. 15 and 16 combined do not read on the definition of a capillary because of the changing diameter, and capillary 16 does not extend from the bore between #s 14 and 15 because of the existence of 15 therebetween.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on M-F 8:30 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph S. Del Sole

  
JOSEPH S. DEL SOLE  
PRIMARY EXAMINER  
10/3/06